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No. 98-830

Supreme Court, U.S.
FILED
MAR 5 1999
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

AMOCO PRODUCTION COMPANY,
on behalf of itself and the class it represents,

Petitioners,

v.

SOUTHERN UTE INDIAN TRIBE,

Respondent.

BRIEF OF AMICUS CURIAE
LA PLATA COUNTY, COLORADO

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QUESTION PRESENTED

Whether, in reserving to the United States "coal" in lands patented under the 1909 and 1910 Coal Lands Entry Acts, 30 U.S.C. §§ 81, 83-85, while passing the surface land and all other minerals (including natural gas) to the patentee, Congress reserved only the solid rock fuel commonly known as "coal," but not natural gas in coal formations.

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STATEMENT OF INTEREST OF AMICUS CURIAE

La Plata County (the "County") is located in southwestern Colorado. The State of New Mexico lies south of the County's southern border. Respondent, Southern Ute Indian Tribe, is a sovereign nation predominately located within the boundaries of La Plata County, Colorado. (App. 1, Vicinity Map of La Plata County, Colorado). Much of the property owned by the Southern Ute Tribe is situated on a reservation or other property held in trust by the federal government within the County. The dispute giving rise to the issue before this Court originated in La Plata County in 1991.

La Plata County is a mineral rich county producing more methane gas than most other Colorado counties combined. Within its borders lie approximately 2000 gas wells, which is one of the single largest proliferations of gas wells within the state. See *Colorado Oil & Gas Conservation Commission Statistics* available in www.dnr.state.co.us/oil-gas/info/ogstat.html. The gas production from these wells has provided significant tax revenues to the County and stability to the local economy. In recent years, and in reliance on federal law and the opinions of the federal government, La Plata County has assessed and levied taxes on those owning and engaged in the exploitation of oil and gas properties, including the extraction of oil and gas. Such taxes and assessments comprise a significant portion of the County's tax revenue. For example, in 1998 alone, oil and gas properties consisted of approximately fifty percent (50%) of the total valuation of all properties in La Plata County. (App. 2, Total Valuation; La Plata County, Colorado).

The County's authority for taxing oil and gas production is, of course, based upon Colorado law. Assessment and taxation of real and personal property is a creature of the Colorado Constitution. *Colo. Const.* Art. X § 3. In 1992, Colorado adopted a Constitutional amendment whereby the taxation of residential property may not exceed a fixed amount of twenty-one percent (21%) of its actual value without an affirmative vote of the electorate. *Colo. Const.* Art. X § 20. However, oil and gas

properties are presently assessed at the greater percentage of eighty-nine and one-half percent (89½%) of actual value for primary production. *Colo. Const.* Art. X § 3(1)(b).[1] Accordingly, in 1998 the valuation of oil and gas in La Plata County was $561.7 million dollars, twice the valuation of all residential properties located within the County. (App. 2, "Total Valuation: La Plata County, Colorado").

Most of this highly valued oil and gas is located within the exterior boundaries of the Southern Ute reservation and the majority of the coal-bed methane ("CBM") is owned by the Tribe. (App. 3, Fruitland Coal-bed Methane Development as of April 9, 1998, Ignacio Blanco Field Southern Ute Indian Reservation Prepared by Southern Ute Department of Energy. Pink legend = Tribal coal/Tribal oil & gas. Green legend = Tribal coal/fee oil & gas). However, significant amounts of CBM, and more specifically the CBM at issue in this case, is owned in fee by non-tribal parties.

The issue of the disputed ownership of this CBM would not be of import to the County but for the fact that although located within the County, property owned by the Tribe is exempt from taxation. 25 U.S.C. § 465. Accordingly, should this Court find that the United States retained ownership of coal-bed methane when Congress reserved "coal" to the United States under the 1909 and 1910 Coal Land Entry Acts, 30 U.S.C. §§ 81, 83-85, the Tribe's ownership of CBM would be significantly expanded and CBM presently held in fee and taxable would transfer to the Tribe. As such, it would be exempt from taxation. 25 U.S.C. § 465.

To fully appreciate the effect on the County of exempting such property from taxation, it should be noted that presently almost one-half of the lands situated in La Plata County are already

[1] In its petition for Writ of Certiorari, Amicus incorrectly understated the assessed percentage of actual value placed on oil and gas property as only twenty-nine percent (29%). Assessing the resource at eighty-nine and one-half percent (89½%) of actual value further magnifies the County's potential plight.

tax-exempt as a result of such lands being held either by Native American Tribes,[2] the federal government, or the State of Colorado. (App. 4, Nontaxable Properties). Conservative projections estimate that if the Tenth Circuit's decision is upheld, approximately twenty-five percent (25%) of the taxable valuation of gas production in La Plata County will be removed from the ad valorem tax base. See "Potential Economic Impacts of the Coal-bed Methane Dispute in La Plata County, Colorado", Office of Economic Analysis and Business Research, Fort Lewis College, 1997. The exemption of additional properties would result in the loss of significant revenues to the County and the school districts and special districts located within the County. In light of the drastic consequences it will have on the County and the County's school districts and special districts, the County urges the Court to carefully review the legal arguments advanced herein and by the Petitioners which support reversal of the Tenth Circuit decision in Southern Ute Indian Tribe v. Amoco Production Co., 151 F.3d 1251 (10th Cir. 1998).

[2] A small tract of land in La Plata County makes up part of the Ute Mountain Ute reservation which is predominately contained in Montezuma County, Colorado.

SUMMARY OF ARGUMENT

In 1909 and 1910, the plain and ordinary meaning given to coal was a "solid." Accordingly, in reserving to the United States "coal" in lands patented under the 1909 and 1910 Coal Lands Entry Act, 30 U.S.C. §§ 81, 83-85, Congress reserved only the solid rock fuel known as "coal," not natural gas in coal formations. Later Acts of Congress specifically reserving gases and other minerals support the conclusion that Congress did not intend to reserve the CBM at issue. Finally, the lower Court's ruling raises the question of the character and nature of the CBM gas that escapes the coal-seam where there is no chemical difference between that remaining in the coal-bed and that which has migrated.

ARGUMENT

In 1909, at the time of the enactment of the first Coal Land Entry Act, Congress never envisioned that what was then known as "marsh gas", presently referred to as CBM, would ever obtain the value it presently enjoys. See, James E. Fassett, *Coal-bed Methane -- a Contumacious, 3-Spirited Bride; the Geologic Handmaiden of Coal-beds*, in ENERGY FRONTIERS IN THE ROCKIES, 131, 132 (John C. Lorenz, et. al. eds, 1989); Southern Ute Indian Tribe v. Amoco Production Co., 151 F.3d 1251, 1268 (10th Cir. 1998) (Dissent). "Marsh gas" was then a known hazard and waste product of coal mining with no contemplated present or future value. Recently, however, technological developments have established methods by which the CBM gas is removed from the ground. Much of the gas is located within the coal deposits, which act as reservoirs for the CBM gas. Given this change in the circumstances regarding the ability to produce CBM from the coal reservoirs, this Court is presented with two intertwined issues: whether a gas produced from within coal is a part of the coal and whether the United States Congress in 1909 and 1910 meant to reserve this coal contained gas when it retained ownership of the coal.

The pertinent parts of the 1909 and 1910 Acts establish that coal underlying the homestead lands was reserved for subsequent mining and removal. 30 U.S.C. § 81, 83-85. No further mention is made in either Act as to the reservation of any gas or other rock or mineral. Id. It has long been held that when a statute does not define a word, such as coal in this case, it is interpreted by its ordinary or natural meaning. See, Smith v. United States, 508 U.S. 223, 228 (1993). Though it is understood that Petitioner and Respondents will appropriately analyze in depth whether the turn-of-the-century Congress meant to include gas within the term "coal", a simple review of the contemporary dictionary definition of coal available to that legislature indicates its ordinary and natural meaning as a "solid." AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE, 244 (1889) cited in Southern Ute Indian Tribe v. Amoco

Production Co., 874 F. Supp. 1142, 1153 (D. Colo. 1995). The District Court and the Dissent on appeal grounded their decisions in a common sense analysis, namely, that the 1909 and 1910 Congresses intended "coal" to mean the solid rock substance. Southern Ute Indian Tribe v. Amoco Production Co., 151 F.3d 1251, 1268-1269 (10th Cir. 1998) (Dissent); Southern Ute Indian Tribe v. Amoco Production Co., 874 F. Supp. 1142 (D. Colo. 1995).

Furthermore, both of these Courts were acutely sensitive to the problems associated with the classification of all CBM as part of the coal from which it is derived because CBM often does not remain within the coal, but rather escapes into adjacent reservoir rock. One need only have lived in this area during the last ten years to know that methane seepage, caused partially at least as a result of gas exploration and extraction, has occurred in various areas throughout the County, sometimes at extremely dangerous levels. (Appendix 5, Durango Herald, "Officials Propose Monitoring Coal-bed," October 31, 1998, John Peel). The Tenth Circuit Court failed to address the coal-bed methane which migrated to adjacent non-coal strata because the Court was primarily concerned with the CBM remaining within the coal-bed. However, the question left unanswered is the character and nature of the CBM that has escaped. Is it coal? The Tenth Circuit fails to confront this issue because, as Judge Tacha appropriately stated in her dissent, "[the majority] would find itself in the uncomfortable position of saying that Congress might have thought that some CBM is coal (i.e., the CBM trapped in coal deposits), but that some CBM definitely is not coal (i.e., the escaped CBM), even though there is no chemical difference between the two groups of CBM." Southern Ute Indian Tribe v. Amoco Production Co., 151 F.3d at 1270.

It is also significant to note that a few years after the 1909 and 1910 Acts, Congress broadened its reservation of coal by specifically reserving "other minerals," as in the Homestead Act of 1916, 43 U.S.C. § 299, and actually reserving the "gas and other named minerals" on lands rich with those minerals in the Act of

July 17, 1914, 30 U.S.C. §§ 121-123. These later more expansive reservations of specific minerals and gas further support the conclusion that Congress did not intend to reserve any mineral or gas other than coal in the 1909 and 1910 Acts.

Lastly, since CBM has only recently enjoyed status as a useful resource, Judge Tacha's observations on behalf of the dissent follow the logic that since CBM was considered a waste product in 1909, "[i]ts ownership [was not] desirable" and, therefore, "one would not expect the United States to reserve it". Southern Ute Indian Tribe v. Amoco Production Co., 151 F.3d at 1269. Common sense dictates that it is illogical to conclude that the single term "coal" could imply a reservation of both coal and other gases when, at the time of the Acts, CBM was undesirable. It follows then that "the fact that CBM had no value confirms the plain meaning, rather than creating an ambiguity" in both the 1909 and 1910 Act. Id. at 1269.

CONCLUSION

This Court should reverse the ruling of the Tenth Circuit Court of Appeals.

RESPECTFULLY SUBMITTED this 5th day of March, 1999.

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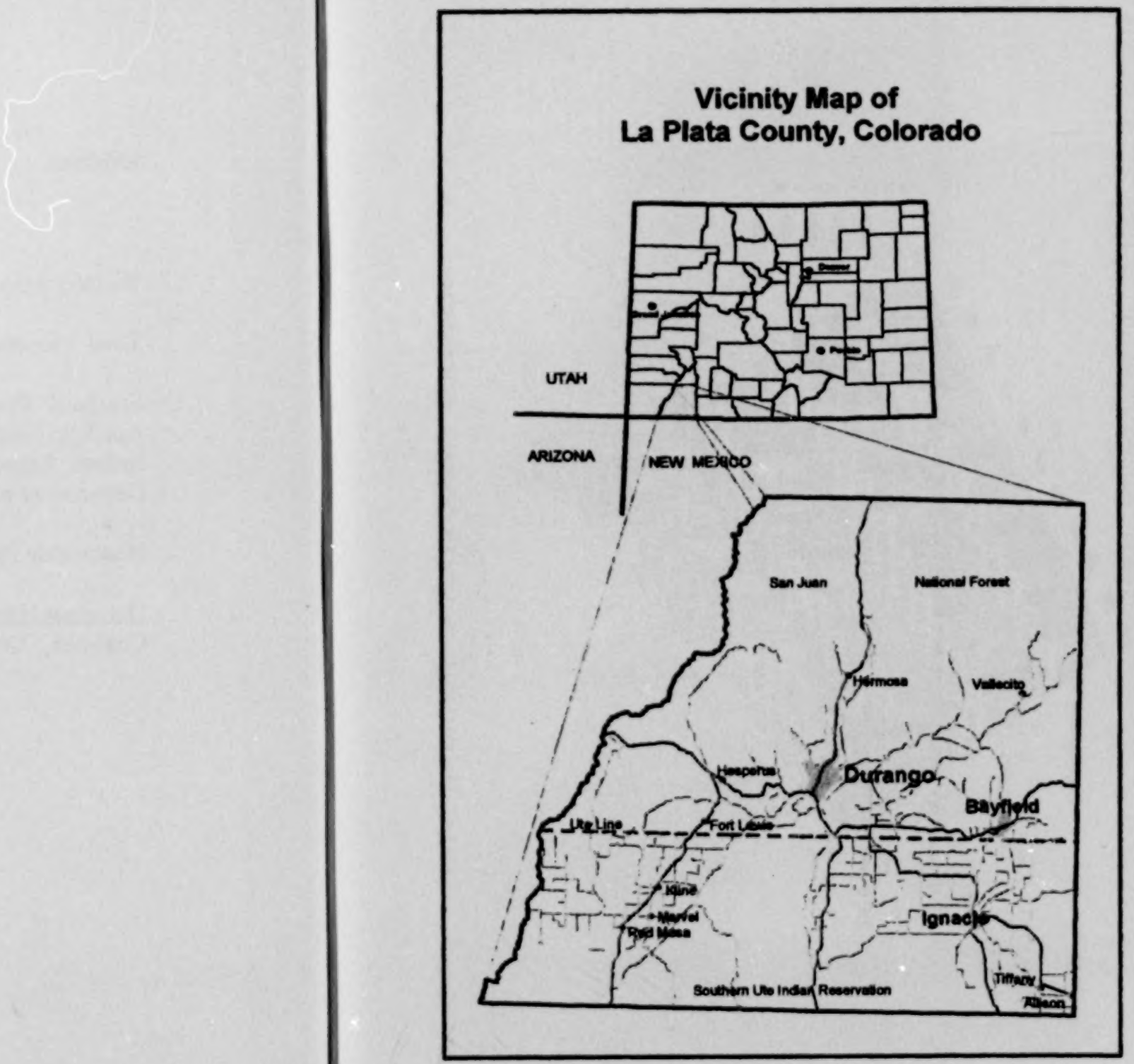

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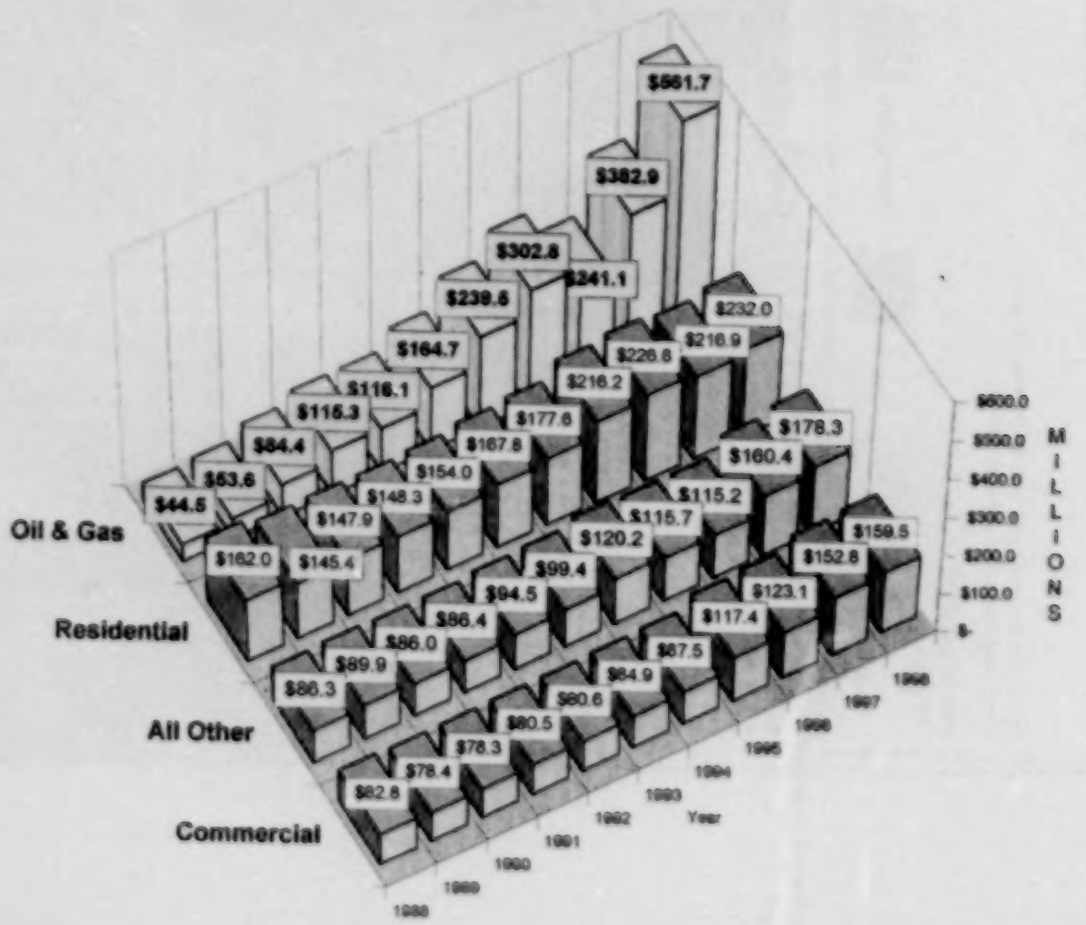
TOTAL VALUATION: LA PLATA COUNTY, COLORADO



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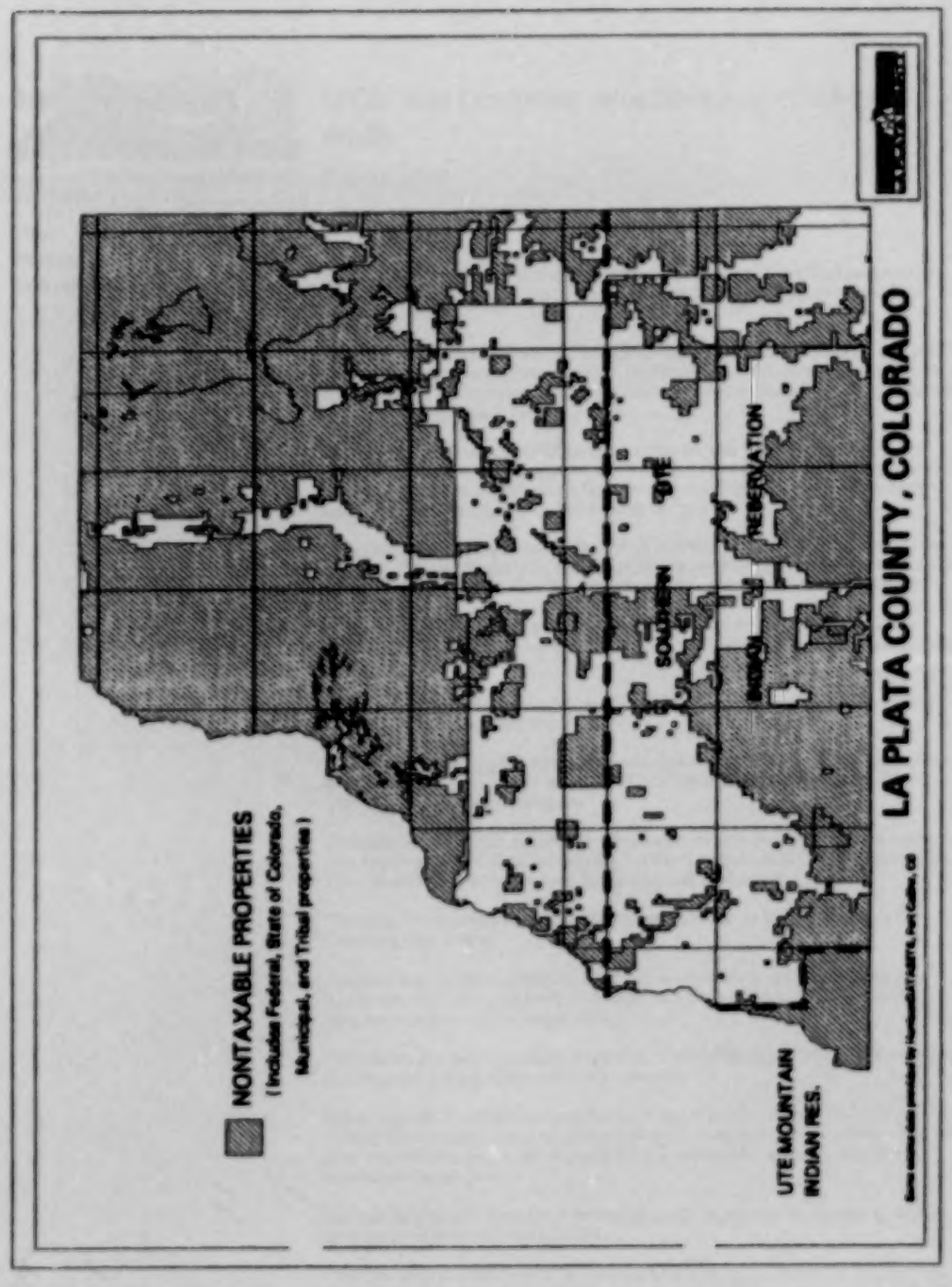
LA PLATA COUNTY, COLORADO
SOUTHERN UTE RESERVATION
UTE MOUNTAIN INDIAN RES.
NONTAXABLE PROPERTIES
(Includes Federal, State of Colorado, Municipal, and Tribal properties)

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Officials propose monitoring coal-bed wells

Oct. 31, 1998

By John Peel
Herald Staff Writer

The Colorado Oil and Gas Conservation Commission's staff has proposed a coal-bed monitoring plan that a La Plata County official Friday called "the dream we're after."

The plan is to cluster at least three monitoring wells at five locations along the Fruitland outcrop in La Plata County. Equipment would monitor water levels in the coal beds. Officials hope the monitors would provide data to help understand gas seeps and, perhaps, coal-bed fires.

The COGCC's seven-member governing board will hear the plan at its Dec. 3 meeting in Denver. If it is approved, COGCC Director Rich Griebling said the state will be asked to provide state severance tax funds for the project as an amendment to the COGCC's 1999-2000 budget.

"I think it looks great," county Technical Adviser Warren Holland said of the proposal. "If we can get that, that's the dream we're after. It sure is exactly what we need to understand what's happening at the outcrop for the first time."

Holland testified before the COGCC commission Oct. 20 that he believes dewatering the coal beds to extract methane gas could cause fires to begin in the coal.

He also believes the dewatering may have led to gas seeps along the outcrop, specifically near the Pine River.

"They've been struggling with obscure to poor data ... without having anything definitive," Holland said of the COGCC. "This achieves some of the deep concerns I've had over the years."

Griebling and COGCC Engineering Manager Morris Bell on Monday visited the area where coal-bed fires are burning on the Southern Ute Indian Reservation. They also looked at monitoring data compiled by the tribe.

"Frankly, it was some of the data that convinced us to kick this study off," Griebling said Friday.

Amoco Corp. funded a study in 1993 to measure methane seeps in the Pine River area. Griebling said it is important this time to have the state fund a long-term project of this magnitude.

"I think we learned something from that," Griebling said. "We feel like having funding and having direct control is essential."

Griebling said if COGCC commissioners approve the project – which he said already has received some negative feedback from industry members – the next step would be to secure the funding from a committee that oversees the severance tax money.

He said he hopes to have the monitoring wells in place and providing data by July, or at least by the end of 1999.

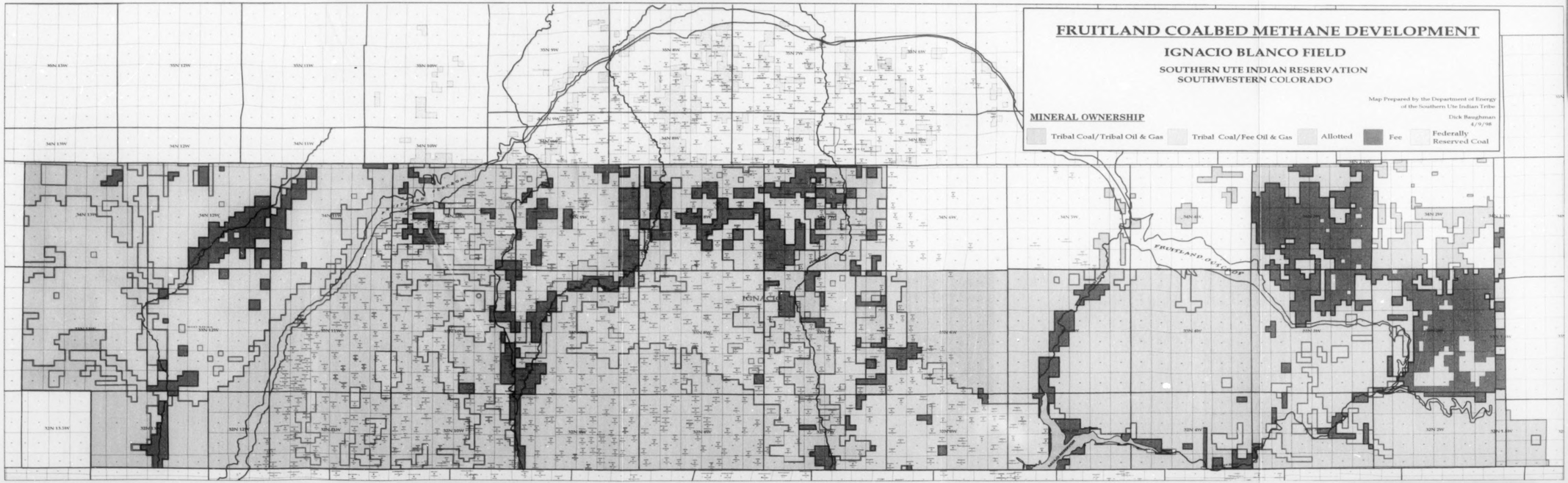
The five well clusters would be based along a 28-mile section of the outcrop. Locations proposed are near the Animas River at Carbon Junction, the Florida River, the South Fork of Texas Creek, the Pine River and Beaver Creek.

Other sites could be added. Griebling said at least three monitoring wells would probably be drilled at each site, with each well monitoring an individual coal

bed.

Several entities would be involved in the program, including the COGCC, the county, the Bureau of Land Management, the Southern Utes, oil and gas companies and professional geologists and engineers.

Holland said he believes the Gas and Oil Regulatory Team – a group set up in 1994 to study gas seeps and other gas development concerns in La Plata County – would have a hand in the project.



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